

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SUNGJIN INC CO., LTD.
vs.

Plaintiff(s)

**Request for Clerk's
Certificate of
Default**

Civil Case No. 1:19-cv-09496-GBD-GWG

ITOCHU INTERNATIONAL INC., et al.

Defendant(s)

Pursuant to Fed. R. Civ. P. 55(a) and L.R. 55.1, plaintiff, Sungjin Inc Co., Ltd. requests a Clerk's certificate of entry of default. Within in an accompanying affidavit, I affirm that the party against whom the judgment is sought:

- 1) is not an infant or incompetent person;
- 2) is not in the military service;
- 3) was properly served under Fed. R. C. P. 4 and proof of service having been filed with the court;
- 4) has defaulted in appearance in the above captioned action.

/s/ Peter Y. Lee

Counsel for Plaintiff(s) / Plaintiff(s) Pro se

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

SUNGJIN INC CO., LTD.,

Case No. 1:19-cv-09496-GBD-GWG

Plaintiff(s),

v.

DECLARATION

ITOCHU INTERNATIONAL INC.;
ITOCHU LOGISTICS (USA) CORP.;
KENNETH HOROWITZ d/b/a BAG
STUDIO, LLC; and
LE SPORTSAC, INC.,

Defendant(s).

PETER Y. LEE, ESQ. hereby declares, pursuant to 28 U.S.C. §1746, under penalty of perjury, as follows:

1. I am a member of the Bar of this Court and attorney-of-record for plaintiff, SUNGJIN INC CO., LTD. (**Plaintiff**) in the above -captioned action. I have personal knowledge of the following facts and circumstances.

2. I submit this declaration pursuant to Rule 55(a) of the Federal Rules of Civil Procedure and Rule 55.1 of the Local Rules of the United States District Court Southern District of New York, in support of Plaintiff's request for certificate of default against KENNETH HOROWITZ (**Defendant**).

3. Plaintiff brings this diversity action against Defendant seeking money damages exceeding \$75,000 for breach of contract, among other things.

4. On October 15, 2019, Plaintiff commenced this action by way of complaint. (**ECF 1.**) Through his attorney, Clifford A. Katz (Platzer Swergold Levine Goldberg Katz Jaslow LLP), Defendant acknowledged service, waived formal service of a summons, and waived personal jurisdiction of this Honorable Court. (**ECF 9, ECF 10.**)

5. By order filed March 2, 2020, counsel for Defendant withdrew from the case. (**ECF 33.**)

6. With leave of Court (**ECF 43**), Plaintiff filed a second amended complaint against Defendant, among others, pursuant to Fed. R. Civ. P. 15(a)(2). (**ECF 45**). (On April 8, 2020, the Court issued an amended summons to Defendant. (**ECF 49**.)

7. On April 6, 2020, I mailed the amended summons and second amended complaint on Defendant, in accordance with and pursuant to Fed. R. Civ. P. 5(b)(2)(C), at the last known address provided by Defendant's (former) counsel, Mr. Katz. (Notwithstanding Defendant's waiver of service, Plaintiff's second amended complaint is a "pleading filed after the original complaint" and thus subject to Fed. R. Civ. P. 5(b)(1)(B).) Proof of service is filed at **ECF 51**. I have annexed **EXHIBIT 1**: Proof of delivery, on April 13, 2020, of the amended summons and second amended complaint.

8. Based on my communications with Mr. Katz, Defendant is not an infant or an incompetent person. Defendant is also not in the military. I have annexed **EXHIBIT 2**: Status report pursuant to Servicemembers Civil Relief Act dated May 13, 2020.

9. To date, Defendant has failed to answer or otherwise enter an appearance in this action since the withdrawal of his former attorney.

WHEREFORE, Plaintiff respectfully requests the Court to enter the default of defendant, **KENNETH HOROWITZ** and endorse and file the accompanying "Clerk's Certificate of Default."

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Date: May 13, 2020

/s/ Peter Y. Lee
By: _____
PETER Y. LEE